



# MONTGOMERY VILLAGE FOUNDATION, INC.

10120 APPLE RIDGE ROAD  
P.O. BOX 2130  
MONTGOMERY VILLAGE, MARYLAND 20886-2130  
(301) 948-0110 FAX (301) 990-7071

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Office of the Secretary  
Federal Communications Commission  
Washington, DC 20554

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Dear Sir/Madam:

Thank you for the opportunity to comment on FCC# 96-78, the proposed rule regarding nongovernmental restrictions on small-antenna video reception adding a new subparagraph (f) to Section 25.104 of Title 47 of the Code of Federal Regulations. Briefly, this proposal would render unenforceable any restrictive covenant, encumbrance, homeowners' association rule, or other nongovernmental restriction which impairs a viewer's ability to receive video programming services over a satellite antenna less than one meter in diameter.

The Montgomery Village Foundation is among the largest homeowners associations in the State of Maryland, with over 34,000 residents. Developed on the planned community model, Montgomery Village consists of 10,000 units represented on the neighborhood level by 20 sub-associations.

In submitting our comments, we note that recently the FCC has adopted a rule allowing local governments to regulate on the basis of health and safety matters. We ask the FCC to modify the proposed rule in a manner which recognizes the legitimate interests of community associations in regulating health and safety matters, as well as maintaining property values through proper and reasonable emphasis on community aesthetics.

Specifically, we request that the FCC recognize the legitimate interest of community associations in health and safety concerns and accord community associations the same status as local government by deleting the proposed paragraph (f) and adding the phrase "restrictive covenant, encumbrance, homeowners' association rule, or other nongovernmental restriction" to the appropriate paragraphs (a) through (e) under section 25.104.

In recommending the above, we make the following points:

1. Congress does not make a distinction between governmental and nongovernmental restrictions. We ask the FCC to do the same.
2. We ask that Congress' intent to ensure the viewer's ability to receive video programming be interpreted as pertaining to an individual's private property only.
3. We ask the FCC to reconsider the prohibition on regulations based on reasonable aesthetic concerns.

#### *No Distinction Made By Congress*

Congress, in enacting Section 207 of the Telecommunications Act, did not in any way, distinguish between state and local governments versus homeowner associations. In fact, the legislative history clearly indicates that Congress intended these entities and their respective enforcement mechanisms to be treated the same. The pertinent House Committee report on this legislation clearly indicates this intent.

"Existing regulations, including but not limited to, zoning laws, ordinances, restrictive covenants or homeowners' association rules, shall be unenforceable to the extent contrary to this section." <sup>1</sup>

In controlling the placement and use of antenna systems, the homeowner associations perform exactly the same function as state and local governments, admittedly through different mechanisms: state and local governments under their police powers versus homeowner associations through private covenants and deed restrictions. For the purposes of FCC rulemaking in this area, we submit that the nature of this authority is irrelevant.

Clearly, in drafting the proposed rule, the FCC has made a distinction between local government and community associations in regulating antenna placement by holding that community association restrictions are based foremost on aesthetic considerations while local government restrictions are based on health and safety. On the basis of this assumption alone, the FCC concludes community association regulations could be accorded less deference. We ask that you reconsider this assumption.

#### *HOA's Have a Legitimate Interest in Health and Safety Matters*

Similar to state and local governments, community associations have always had a legitimate interest in matters of "health and safety." These very words are reflected in association documents

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<sup>1</sup> House of Representatives Report No. 104-204, p. 123-124 (1995).

and rules which routinely provide for the regulation or participation in such matters. Attachment 1 is an excerpt from the Articles of Incorporation of the Montgomery Village Foundation, Inc. which clearly states that, among other purposes, the corporation was formed to "promote the health, safety and welfare" of Village residents. Further, the documents empower the corporation to engage in the provision of basic "health and safety" functions: "to provide such facilities and services in connection therewith as permitted by law and including, but not limited to...garbage and trash collection, fire and police protection, maintenance of unkempt land...and other supplemental municipal services."

Paragraph (f) of the FCC's current proposal would call into question an association's ability to enact and enforce rules relating to the placement, professional installation, and routine maintenance and upkeep of antennas. Also at question would be rules relating to the removal of obsolete equipment and restoration of property.

Attachment 2 is a photograph of a roof-mounted antenna. Without proper installation and maintenance, this antenna would pose a threat to the health and safety of nearby residents if it were to break loose in heavy winds. Significant property damage to both the antenna-owners' home and adjacent homes or community property could result.

Improperly installed or maintained satellite dishes could damage the structural integrity of buildings. This is particularly a concern of condominiums and cooperatives where the exterior is not the private property of one individual, but is owned "in common".

In communities where individual units have little private property, ground-mounted antennas may pose a safety threat. Without reasonable setbacks from sidewalks or common elements there would not be a prudent safety zone for public passage. Attachment 3 shows an example of a townhouse community with limited private property.

Finally, the proposed rule makes no provision for community associations to regulate the removal of obsolete equipment and the proper restoration of the exterior for the purpose of ensuring public safety.

#### *Private Property Issues*

In certain townhouse configurations, as well as condominium and apartment buildings, some units will not have the southwest exposure needed for video reception (See attachment 4). Certain housing styles will, by their very nature, adversely impact a homeowner's ability to receive telecommunication signals.

Many questions arise about FCC interpretation of its prohibiting restrictions which impair a viewer's ability to receive video signals. For example, while it is clear under the proposed rule that owners have the right to place satellite dishes under one meter on their own property,

- ▶does this right extend to property owned *in common*, such as the exterior and grounds of condominium buildings?

- ▶does this right extend to property owned *by others*, as is the case with apartment buildings and certain tri-plex townhouse styles?

In situations where some or many units lack a southwest exposure, could the association satisfy the Congress' intent through a "master" satellite system which serves each building or group of units. Such a system for broadcast antennas is already functioning in many common ownership communities.

We ask for clarification that the ability of a viewer to receive unimpaired video transmissions via satellite does not extend beyond the confines of the viewer's privately owned property. If this is considered too narrow an interpretation of Congress' intent, we ask for the following clarification:

- ▶When unimpaired reception can only be accomplished through use of property owned in common, the association must be allowed to determine the method of providing access most suitable to the situation.

#### *Property Values and Aesthetic Considerations*

On Wednesday April 3, the national media reported opposition of mayors nationwide to the FCC final rule to take effect on April 17. We understand that opposition arose because the rule takes away the ability of local authority to regulate the placement of antennas based on aesthetics. We share this concern.

As one example, the FCC should consider the impact of unfettered proliferation of satellite dishes on historic areas. Is it truly Congress' intent to see satellite dishes prominently installed on the roofs or facades of historic register homes? The concern over aesthetics is no less important to the homeowners who choose to live in community associations than it is to our nation's mayors and preservationists.

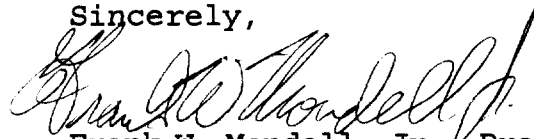
We ask that the FCC reconsider its hard-line stance on this point with regard to *both* governmental and nongovernmental regulation.

In conclusion, we ask that the FCC accord community associations the same status in regulating this matter as is accorded local and state governments. We ask the FCC to recognize the legitimate role of community associations in regulating health

and safety concerns which are unique to planned community living. We ask the FCC to clarify the private property issues involved and address the right of viewers to place equipment on property which they do not own. Finally, we ask the FCC to reconsider its stance on the use of reasonable aesthetic factors in regulating the placement of antennas.

If we can provide any clarification or additional information regarding these points, please feel free to contact Peter Kristian, Executive Vice President (extension 322) or Donna Zanetti, Director of Government Relations (extension 313) at (301) 948-0110.

Sincerely,

A handwritten signature in dark ink, appearing to read "Frank W. Mondell, Jr.", written in a cursive style.

Frank W. Mondell, Jr. President  
Board of Directors

FWM/daz  
Enclosure

cc: Community Associations Institute  
Metropolitan-Washington Chapter CAI

**Liber 121, Page 507**  
**Recorded Oct. 17th, 1966.**

**AMENDED**

**ARTICLES OF INCORPORATION**

**OF**

**MONTGOMERY VILLAGE FOUNDATION, INC.**

**FIRST:** We, the undersigned, Norman M. Glasgow, Harvey H. Holland, Jr. and Allen Jones, Jr., all of whom are residents of Montgomery County, Maryland, and all of whom are at least twenty-one (21) years of age, do, under and by virtue of the General Laws of the State of Maryland authorizing the formation of corporations, associate ourselves as incorporators with the intention of forming a non-stock, non-profit corporation.

**SECOND:** The name of the corporation is

**MONTGOMERY VILLAGE FOUNDATION, INC.**

**THIRD:** The purposes for which the corporation is formed are:

To promote the health, safety and welfare of the residents of the community of Montgomery Village, Maryland, and as described and defined in applicable Declaration of Covenants, Conditions and Restrictions recorded or to be recorded in the land records for Montgomery County, Maryland, and such additions thereto as may hereafter be brought within the jurisdiction of this corporation by virtue of the recording of Supplementary Declarations of Covenants, Conditions and Restrictions.

To own, acquire, build, operate and maintain parks, playgrounds, swimming pools and other recreational facilities, open spaces, commons, streets, roads and walkways, including buildings, structures and personal properties incident thereto and to provide such facilities and services in connection therewith as permitted by law and including, but not limited to, the following:

1. Exterior maintenance for properties within Montgomery Village;
2. Garbage and trash collection;
3. Fire and police protection;
4. Maintenance of unkempt lands or trees; and
5. Other supplemental municipal services.



**Satellite dishes in communities  
outside Montgomery Village**

# *FOREST BROOKE*







DOCKSIDE  
OF  
SOUTH VILLAGE